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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Amendment to the Commission's Rules ) WT Docket No. 95-157  
Regarding a Plan for Sharing ) RM-8643  
the Costs of Microwave Relocation )

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COMMENTS OF IOWA L.P. 136

Iowa L.P. 136, by its attorney, hereby files its comments in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.<sup>1</sup>

I. INTRODUCTION

Iowa L.P. 136 is an applicant for channel block C licenses to provide broadband personal communications services ("PCS") in fourteen markets. Its FCC Form 175 for the channel block C license auction was accepted for filing by the Commission's Public Notice, Report No. AUC-95-05, released on November 20, 1995. Iowa L.P. 136 is a small business as defined by Section 24.720(b) of the Commission's rules.

In this proceeding, the Commission proposes a mandatory cost-sharing plan, to be administered by a clearinghouse, that would distribute microwave relocation costs among PCS providers.<sup>2</sup> According to this plan, the PCS provider who first relocates an interfering microwave link would earn the right to reimbursement from subsequent PCS providers who would have experienced interference but for the relocation.<sup>3</sup> The amount of reimbursement

<sup>1</sup> Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, Notice of Proposed Rulemaking, WT Docket No. 95-157, RM-8643, FCC 95-426 (released October 13, 1995) (hereinafter "Notice").

<sup>2</sup> Notice, ¶ 46.

<sup>3</sup> Id., ¶ 55.

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would be calculated according to a cost-sharing formula which takes into account the amount the provider paid to relocate a link, the numerical status of the subsequent licensee (i.e. whether the subsequent licensee is second, third or fourth, etc.), and the time that has passed since the initial relocation.<sup>4</sup>

Under the Commission's proposed plan, PCS licensees would be required to pay the following microwave relocation costs: radio terminal equipment (TX and/or RX - antenna, necessary feed lines, MUX/Modems); towers and/or modifications; back-up power equipment; monitoring or control equipment; engineering costs (design/path survey); installation; systems testing; FCC filing costs; site acquisition and civil works; zoning costs; training; disposal of old equipment; test equipment (vendor required); spare equipment; project management; prior coordination notification under Section 21.100(d) of the Commission's rules; site lease renegotiation; required antenna upgrades for interference control; power plant upgrade (if required); electrical grounding systems; Heating Ventilation and Air Conditioning (HVAC) (if required); alternate transport equipment; and leased facilities.<sup>5</sup> The Commission has tentatively concluded that a reimbursement cap of \$250,000 per link, with an additional \$150,000 where a new tower is required, is an accurate approximation of likely microwave relocation costs.<sup>6</sup> The magnitude of these costs would impose an onerous financial burden on small businesses like Iowa L.P. 136 and significantly

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<sup>4</sup> Id., ¶ 25.

<sup>5</sup> Id., ¶ 37.

<sup>6</sup> Id., ¶ 43.

impair their ability to effectively compete with very large channel block A or B licensees in the provision of broadband PCS.

The only relief that the Commission has proposed for small businesses is to allow them to pay for microwave relocation costs in installments. The Notice seeks comments on whether the repayment schedules and interest rates that the Commission adopted for repaying auction bids are appropriate for cost-sharing purposes.<sup>7</sup> More is needed. To better achieve the goals of the Communications Act, to "ensure" that small businesses effectively compete in the provision of broadband PCS, the Commission should exempt small businesses from the payment of microwave relocation costs during the involuntary relocation period, particularly when microwave licensees are larger companies, such as petroleum companies, utilities, and railroads, with greater financial resources to bear their own microwave relocation costs. As an alternative, should the Commission decline to adopt a microwave relocation cost payment exemption for small businesses, it should consider exempting small businesses from cost-sharing payments or adopt a combination of credits and installment payments to ease the burden of cost-sharing on small businesses.

## II. THE COMMISSION SHOULD ADOPT MEASURES THAT AVOID BURDENING SMALL BUSINESSES WITH MICROWAVE RELOCATION COSTS

Because broadband PCS licenses in many cases are expected to be auctioned for large sums of money in the competitive bidding process, and because build-out costs are likely to be high, it is necessary to do more to ensure that small businesses have the

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<sup>7</sup> Id., ¶ 61.

opportunity to participate in broadband PCS than is necessary in other, less costly spectrum-based services. A small business exemption to the payment of microwave relocation costs is required to fulfill Congress's mandate that small businesses have the opportunity to participate in the provision of PCS. Such a small business exemption will also increase the likelihood that small businesses who win licenses in the auction become strong competitors in the provision of broadband PCS services.

Section 309(j)(3)(B) of the Communications Act directs the Commission to promote "economic opportunity" for small businesses and competition.<sup>8</sup> Section 309(j)(4) also directs the Commission to "ensure that small businesses ... are given the opportunity to participate in the provision of spectrum based services, and, for such purposes, consider the use of tax certificates, bidding preferences, and other procedures."<sup>9</sup> The Commission has concluded that "the use of any such procedure is, in our view, mandated where necessary to achieve Congress's objective of ensuring that designated entities have the opportunity to participate in broadband PCS."<sup>10</sup>

In instructing the Commission to ensure the meaningful participation by small businesses in spectrum-based services, Congress was well aware of the difficulties these groups encounter in accessing capital. Indeed, only three years ago, Congress made

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<sup>8</sup> 47 U.S.C. § 309(j)(3)(B).

<sup>9</sup> 47 U.S.C. § 309(j)(4).

<sup>10</sup> Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Fifth Report and Order, 9 FCC Rcd 5532, 5571 (1994).

specific findings in the Small Business Credit and Business Opportunity Enhancement Act of 1992, that "small business concerns, which represent higher degrees of risk in financial markets than do large businesses, are experiencing increased difficulties in obtaining credit"<sup>11</sup> Because of these problems, Congress resolved to consider carefully legislation and regulations "to ensure that small business concerns are not negatively impacted" and to give priority to passage of "legislation and regulations that enhance the viability of small business concerns."<sup>12</sup>

The Commission has adopted a policy supporting measures that not only encourage the participation of small businesses in broadband PCS, but also create the opportunity for small businesses to become strong, long-term bona fide competitors in broadband PCS.<sup>13</sup> To achieve this end, "smaller companies need more assistance accessing capital for broadband licenses and, therefore, the Commission decided these businesses should receive more favorable treatment than the medium or large companies participating in the C block auction."<sup>14</sup> The inability of small businesses to obtain adequate private financing creates a serious imbalance between these companies and large businesses in their prospects for competing successfully in the provision of broadband PCS.

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<sup>11</sup> Small Business Credit and Business Opportunity Enhancement Act, § 331(a)(3), Pub. Law 102-366, 106 Stat. 1007 (1992).

<sup>12</sup> Id., § 331(b)(2),(3).

<sup>13</sup> Fifth Report and Order, 9 FCC Rcd. at 5579.

<sup>14</sup> Implementation of Section 309(j) of the Communications Act - Competitive Bidding, Sixth Report and Order, PP Docket No. 93-253, FCC 95-301, slip op. at ¶ 40 (released July 18, 1995).

Given the enormous costs of broadband PCS and the existence of very large participants licensed to use the A and B channel blocks, a small business exemption from the payment of microwave relocation costs is fully consistent with the congressional intent of promoting long term participation by businesses, which, because of their smaller size, lack access to sufficient capital to compete effectively with larger PCS licensees. To qualify for this exemption from the payment of microwave relocation costs, Iowa L.P. 136 recommends that the Commission apply the definition of small business set forth in Section 24.720(b) of the Commission's rules. Medium-sized businesses and large businesses would still be obligated to make payments to microwave licensees for the costs of relocation. Such an exemption would allow small business PCS licensees to avoid the use of their limited funds to subsidize the relocation of microwave licensees, such as petroleum companies, utilities, and railroads, which are much larger companies with greater financial resources to bear their own microwave relocation costs. Such savings by small business concerns could then be used to build their PCS networks and enhance their competitive viability.

Iowa L.P. 136 believes that this small business exemption to the payment of microwave relocation costs should apply during only the involuntary relocation period. A small business PCS licensee that signs an agreement with a microwave incumbent during the voluntary relocation period that provides for the relocation of a specified number of microwave links would obtain reimbursement rights and be responsible for the payment of a share of the microwave relocation costs according to the Commission's cost-

sharing formula. Thus, such a limited exemption would give small businesses the opportunity to evaluate whether the payment of microwave relocation costs is the best use of their limited funds if it would allow them to become the first licensees in the market area to offer broadband PCS.

As an alternative, should the Commission decline to adopt a microwave relocation cost payment exemption for small businesses, it should consider exempting small businesses from cost-sharing payments or adopt a combination of credits and installment payments to ease the burden of cost-sharing on small businesses. Under this alternative, small business PCS licensees who first relocate interfering microwave links would earn the right to reimbursement from subsequent PCS providers who would have experienced interference but for the relocation. However, if a subsequent PCS licensee qualifies as a small business, it would be exempt from paying any amounts due under the Commission's cost-sharing formula. Should the Commission disfavor a small business exemption, it should at a minimum apply a 75% credit to small business cost-sharing payments and allow small businesses to make cost-sharing payments in installments under the same terms applicable to the licensee's auction payments.

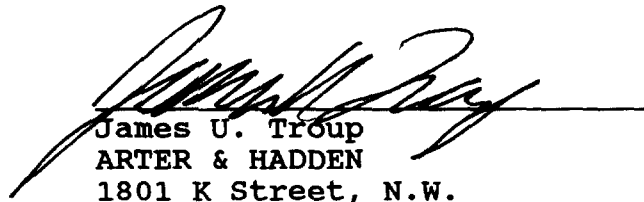
### III. CONCLUSION

The costs associated with microwave relocation would impose an onerous financial burden on small businesses like Iowa L.P. 136 and significantly impair their ability to effectively compete with very large channel block A or B licensees in the provision of broadband PCS. The adoption of a microwave relocation cost payment exemption for small businesses is necessary to achieve Congress's objective

of ensuring that designated entities have the opportunity to become strong, long-term bona fide competitors in broadband PCS. Should the Commission disfavor such an exemption, Iowa L.P. 136 urges the Commission to either exempt small businesses from cost-sharing payments or adopt a combination of credits and installment payments to ease the burden of cost-sharing on small businesses.

Respectfully submitted,

IOWA L.P. 136

A handwritten signature in black ink, appearing to read "James U. Troup", is written over the printed name and address.

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